

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Multi-Association Group (MAG) Plan for	)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price	)	
Cap Incumbent Local Exchange Carriers and	)	
Interexchange Carriers	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	
	)	
Access Charge Reform for Incumbent Local	)	CC Docket No. 98-77
Exchange Carriers Subject to Rate-of-Return	)	
Regulation	)	
	)	
Prescribing the Authorized Rate of Return for	)	CC Docket No. 98-166
Interstate Services of Local Exchange Carriers	)	

**REPLY OF THE  
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC**

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## **SUMMARY**

The record supports the need for modifications to the Interstate Common Line Support (ICLS) rules, as proposed by NECA, NRTA, OPAS TCO and USTA. These rule changes will assure that the new ICLS mechanism will be implemented in accordance with the Commission's intent.

NECA confirms that, in the event the grants request to modify the MAG Order to allow reallocation of the transport cost currently included in the TIC to a transport rate element, instead of the common line element, it can perform the necessary coordination and synchronization to recalculate rates for affected pooling carriers without disrupting the pooling process.

The Commission should not consider proposals to eliminate LTS immediately. Questions regarding the future of LTS are being addressed in the FNPRM phase of this proceeding. The Commission should not take any action to pre-judge the outcome of that proceeding.

The Commission must apply extreme caution before considering proposals that would further jeopardize rural carriers' ability to recover costs, and must base future decisions on analyses of how changes in separations, universal service and access charge rules are actually affecting carriers and their customers. To assist the Commission in this effort, NECA is planning to conduct a study of the effects of these changes on interstate cost recovery, and will share the results of that study with the Commission and interested parties.

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**REPLY OF THE  
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

The National Exchange Carrier Association, Inc. (NECA) submits this reply to comments and oppositions filed in response to petitions for reconsideration of the above-captioned MAG Order released November 8, 2001.<sup>1</sup>

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<sup>1</sup> Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket no. 00-256, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 98-77, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket no. 98-166, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 66 Fed. Reg. 59719 (2001) (*MAG Order*).

**I. THE COMMISSION MUST AMEND THE ICLS RULES TO ASSURE SUCCESSFUL IMPLEMENTATION OF THE PROGRAM IN ACCORDANCE WITH COMMISSION INTENT.**

The Rural Consumer Choice Coalition (RCCC) agrees with the Associations that the Interstate Common Line Support (ICLS) data collection rules need to be changed if the new mechanism is to be implemented successfully.<sup>2</sup> RCCC supports expanding the reach of section 54.903, concerning data to be submitted to the Administrator by March 31 of each year, to include pertinent information necessary to compute ICLS support amounts, not just common line revenue requirement information.<sup>3</sup>

RCCC also seeks timely true-up of per-line support amounts.<sup>4</sup> The rule changes proposed by the Associations accomplish this result by using interim quarterly true-ups of the ICLS data to reduce the need for significant support adjustments during the final true-up process.<sup>5</sup> The Associations also proposed that the Commission allow carriers to submit actual cost and revenue data for a given year no later than December 31 of the following year, after cost study review has been completed.<sup>6</sup> The Associations pointed out that the interim true-up process will reduce the size and scope of the final true-up

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<sup>2</sup> See Comments of the Rural Consumer Choice Coalition on the Petition of NECA, et. al. for Reconsideration and/or Clarification, Feb. 14, 2002 (RCCC Comments), *citing* Petition for Reconsideration and/or Clarification filed by NECA, NRTA, OPASTCO, and USTA (the Associations) (filed Dec. 31, 2001) (Association PFR).

<sup>3</sup> See RCCC Comments at p. 2; *see also* Association PFR at Exhibit A, p. 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at Exhibit A, p. 2. The Associations propose that the Commission modify section 54.903(a)(4) so as to permit carriers to update cost and revenue data on a quarterly basis following the submission of initial projections and to permit the administrator to make corresponding quarterly adjustments to payments as such updates are submitted.

<sup>6</sup> *Id.*

adjustments and that administrative burdens on many reporting carriers will be materially reduced, since this data reporting procedure is consistent with current rules governing true-ups of local switching support (LSS) amounts<sup>7</sup> as well as existing common line pooling processes.<sup>8</sup>

The RCCC expresses concern that, under the true up process contemplated by the Associations' proposal, ICLS true-ups would not become final until December 31<sup>st</sup> of the following year.<sup>9</sup> NECA believes that this concern is substantially resolved by permitting more frequent interim true-ups of ICLS data, as suggested in the Associations' Petition. Should the Commission feel that voluntary quarterly true-ups are not sufficient, however, the rule could reasonably be amended to specify a mandatory interim true-up on July 31 of each year.<sup>10</sup>

In addition the Commission should implement the other modification suggested by the Associations:

- Modify 54.903(a)(3) to permit carriers to update ICLS projections after April 10<sup>th</sup> of each year. The Associations proposed rule modifications that would require carriers to update ICLS projections on July 15<sup>th</sup> of each year. By extending the date to after the annual tariff filing process is completed, there will be more accurate cost and revenue projections, as well as approved average schedule formulas, available for all study areas.

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<sup>7</sup> See 47 C.F.R. §54.301(e)(1) regarding submission of true-up data for LSS.

<sup>8</sup> See Association PFR at Exhibit A, p. 2.

<sup>9</sup> See RCCC Comments at p. 2.

<sup>10</sup> Since the data necessary for such true-ups are produced as a by-product of NECA tariff activities and pooling reporting procedures, there would be no incremental cost associated with providing more frequent true-up data by NECA to USAC or the Commission for common line pooling companies.

- Revise section 54.904(d) to avoid the need for two ICLS certification submissions within three months in 2002. The current rule imposes unnecessary administrative burdens on carriers; modifying it as suggested in the Associations' petition will avoid the need to make an unnecessary certification filing.
- Modify section 69.606(h)(2) of the rules to specify that NECA Category I.B expenses be apportioned to individual study areas on a pro rata basis.<sup>11</sup>

In addition to the above, NECA has determined that a typographical error appears to have occurred in section 54.901(b)(3)(i). This rule governs the targeting of ICLS support between residential and single line business lines and multi-line business lines. According to the discussion set forth in paragraph 154 of the MAG order, where more than \$2.70 in monthly is available for each residential and single-line business customer, the administrator must distribute the additional support to all customer classes by subtracting the product of \$2.70 and the number of residential and single line business customers from the *total* study area (or disaggregation zone) amount. If additional amounts remain, that amount is divided by all of the study area (or disaggregation zone) lines to establish the multi-line business ICLS amount. The residential and single-line business amount is then determined by adding \$2.70 to the multi-line business amount.

The rules describing this calculation specify, however, that the administrator is to subtract the product of \$2.70 and the number of residential and single line business customers from the *average* study area ICLS amount. This approach produces substantially different results than what the Commission appears to have intended in the

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<sup>11</sup> Modification of section 69.606(h)(2) is necessary to effectuate the intent of the MAG Order, which revised section 69.603(g) of the rules to include ICLS amounts in the allocation of NECA administrative expenses. Modifying section 69.606(h)(2) as suggested by the Associations will assure that these common line administrative expenses continue to be included in common line revenue requirements and recovered in an equitable manner following elimination of the CCL charge in 2003.

description of the process in the Order. To correct this problem, the word “average” should be replaced by the word “total” in section 54.901(b)(3)(i) of the rules.

**II. NECA CONFIRMS THAT THE POOLING MECHANISM CAN ACCOMMODATE REQUESTS TO DELAY IMPLEMENTATION OF CERTAIN COST REALLOCATIONS IN STATES THAT REQUIRE CARRIERS TO "MIRROR" INTERSTATE CHARGES FOR INTRASTATE ACCESS.**

CenturyTel requested that the Commission delay the effectiveness of the rules requiring reallocation of line-side port and transport interconnection charges (TIC) costs in states that mirror federal traffic-sensitive (TS) access charges, in order to allow state commissions time to review affected carriers' rate structures and levels and ensure that adequate state universal service mechanisms exist.<sup>12</sup> NRTA, OPASTCO, and USTA submitted joint comments supporting this request, subject to confirmation that NECA can implement the requested delay for affected pooling companies without adversely affecting other pool members.<sup>13</sup>

NECA confirms that it can do the necessary coordination and synchronization to recalculate rates for affected pooling companies without disrupting the pooling process. For example, should the Commission grant delays in the allocation of TS access element costs to the common line element for specific companies or groups of companies, NECA's existing tariff rate development and pool reporting processes could easily

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<sup>12</sup> See CenturyTel Petition for Reconsideration, Dec. 31, 2001 (CenturyTel PFR) at p. 2.

<sup>13</sup> See Reply of NRTA, OPASTCO, and USTA to Petitions for Reconsideration, Feb. 14, 2002 (NRTA, OPASTCO, USTA Joint Comments) at p. 12-13.



accommodate this treatment without adverse impact on NECA or other pool participants.<sup>14</sup>

Similarly, the Plains Rural Independent Companies requested that the Commission modify the MAG Order to allow reallocation of the transport costs currently included in the TIC to the proper transport rate elements, instead of to the common line element.<sup>15</sup> NTCA supported this proposal.<sup>16</sup> Should the Commission decide to grant this request, NECA can perform the necessary reallocation for pooling companies.

### **III. THE COMMISSION'S FNPRM, NOT RECONSIDERATION, IS THE PLACE FOR DECIDING THE FUTURE OF LTS.**

In its Petition for Reconsideration, the Competitive Universal Service Coalition (CUSC) argues that Long Term Support (LTS) should be eliminated immediately.<sup>17</sup> NRTA, OPASTCO, and USTA<sup>18</sup> and Puerto Rico Telephone Company (PRTC)<sup>19</sup> opposed CUSC's request.

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<sup>14</sup> NECA recently filed comments explaining how the pooling process can also accommodate a broad variety of optional incentive regulation plans and pricing flexibility proposals for rate-of-return carriers. See Comments of NECA, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256 (filed Feb. 14, 2002).

<sup>15</sup> See Petition for Reconsideration of the Plains Rural Independent Companies, Dec. 31, 2001 (Plains PFR) at p. 1.

<sup>16</sup> See NTCA Comments in Opposition and Support of the Petitions for Reconsideration, Feb. 14, 2002 (NTCA Comments) at p. 6.

<sup>17</sup> See Petition for Reconsideration of the Competitive Universal Service Coalition, Feb. 14, 2002 (CUSC Petition) at p. 9.

<sup>18</sup> See NRTA, OPASTCO, USTA Joint Comments at p. 8-9.

<sup>19</sup> See PRTC Opposition to Petition for Reconsideration of the Competitive Universal Service Coalition, Feb. 14, 2002 (PRTC Opposition).

NRTA, OPASTCO and USTA correctly explained that CUSC's arguments are based on erroneous assumptions.<sup>20</sup> LTS is not duplicative of ICLS, as CUSC claims, and does not result in double recovery of costs. The Commission's rule for calculating ICLS explicitly calls for the removal of LTS from the residual that becomes ICLS.<sup>21</sup> NRTA, OPASTCO and USTA also correctly point out that, in claiming that LTS is an improper implicit support mechanism, CUSC overlooked the Commission's action in 1997 to revamp the LTS mechanism to ensure that LTS support was both explicit and portable.<sup>22</sup>

NECA agrees with NRTA, OPASTCO, and USTA that Commission action on this request would circumvent the Commission's ongoing rulemaking regarding the future of LTS.<sup>23</sup> In the MAG FNPRM, the Commission has asked for comment on its tentative conclusion that LTS should be merged with the new ICLS mechanism as of July 1, 2003.<sup>24</sup> CUSC's proposal to eliminate LTS at this stage would obviously prejudice the outcome of the FNPRM and should not be considered by the Commission.

#### **IV. THE COMMISSION SHOULD EVALUATE THE EFFECTS OF ITS DECISIONS ON RURAL AREAS BEFORE ACTING ON OTHER PROPOSALS FOR ALTERNATIVE COST RECOVERY.**

The ink has barely dried on the revised access charge rules promulgated in the MAG Order. The changes brought about by the Order have only begun to be

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<sup>20</sup> See NRTA, OPASTCO, USTA Joint Comments at p. 8.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 8, PRTC Opposition at p. 3.

<sup>23</sup> *Id.*

<sup>24</sup> *MAG Order* at ¶ 272.

implemented, and will not be completed until mid-2003. Yet, some parties in this proceeding are already calling for significant changes. CUSC, for example, would have the Commission cap ICLS support before the new mechanism is even implemented.<sup>25</sup> NTCA opposes on the ground that a cap could deny companies the support needed to meet their interstate revenue requirement without providing an alternative means of recovery.<sup>26</sup> Several other parties fear that such actions would discourage rural infrastructure investment and plague rural carriers with instability and uncertainty.<sup>27</sup> RCCC proposes mandatory reductions in rate of return companies' traffic sensitive access rates to a below-cost target price, with the residual recovered through additional universal service funding.<sup>28</sup> In addition, RCCC suggests that the Commission should

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<sup>25</sup> See CUSC Petition at pp.7-8. CUSC claims that there is potential for unlimited fund growth which will increase the contribution burden on other carriers, give rural ILECs a revenue guarantee, and hamper the development of competition.

<sup>26</sup> See NTCA Comments at pp. 8-9.

<sup>27</sup> See Plains Rural Independent Companies' Opposition to Petitions for Reconsideration, Feb. 14, 2002 (Plains Opposition) at pp. 4-5 and South Dakota Telecommunications Association (SDTA) and Townes Telecommunications, Inc. Oppositions to Petitions for Reconsideration, Feb. 14, 2002 (SDTA and Townes Opposition) at p. 3.

<sup>28</sup> RCCC Petition at 8-10. NTCA points out that the FCC has already considered this proposal and concluded that it would not be representative of the costs of rural carriers. NTCA Comments at 3. NTCA also notes that nothing in the Act requires the Commission to lower ROR carrier access rates below cost. *Id.* at 3-4. Other commenters argue that this proposal would result in excessive universal service support, burden ratepayers nationwide, be inconsistent with the principles of cost-based pricing, and present the danger of distorting competition. See, e.g., NRTA, OPASTCO, USTA Comments at pp. 10-11, NRTA Comments at p. 4, and Innovative Telephone Opposition to Petition for Reconsideration, Feb. 14, 2002 (Innovative Opposition) at p. 7.

further lower access rates by shifting additional costs to the common line element, for recovery through the ICLS mechanism.<sup>29</sup>

Other parties in this proceeding raise significant concerns over changes that have already occurred. NTCA, for example, focuses on the impact of "flash cut" subscriber line charge (SLC) increases on rural customers.<sup>30</sup> Several parties express concern about the Commission's apparent conclusion that carrier investments and expenses that have previously been treated as carrier costs and recovered via access charges should now be redefined as "implicit subsidies" and recovered via universal service support mechanisms without sufficient consideration of whether those mechanisms can be sustained in a competitive environment.<sup>31</sup> The States of Hawaii and Alaska caution that decisions made in this proceeding may inadvertently dilute the strength of the prohibition on geographic deaveraging of IXC rates contained in section 254(g) of the Act.<sup>32</sup> As discussed above, the Plains Companies warn that TIC cost reallocations may be

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<sup>29</sup> See RCCC PFR at pp. 16-23. RCCC proposes that TIC costs be reallocated from switching to common line and that the information surcharge and marketing costs also be shifted to common line.

<sup>30</sup> See NTCA Petition for Reconsideration, Dec. 31, 2001 (NTCA PFR) at pp. 11-14. NTCA has requested that the Commission phase in the multi-line business SLC over a three-year period to avoid potentially harmful impact on small rural businesses struggling with the economic recession. NTCA has also asked the Commission to allow rural carriers to forego any SLC increases on Centrex lines to public institutions which provide public health or safety services.

<sup>31</sup> See South Dakota Telecommunications Association (SDTA) Petition for Reconsideration, Dec. 31, 2001 (SDTA PFR) at pp. 4-6 and Petition for Reconsideration of the Alliance of Independent Rural Telephone Companies (Alliance PFR) at pp. 17-20.

<sup>32</sup> See Comments of the State of Hawaii, Feb. 14, 2002 (Hawaii Comments) at p. 3 and Comments of the State of Alaska on Petitions for Reconsideration, Feb. 14, 2002 (Alaska Comments) at p. 5.

incorrectly assigned to common line and universal service support whereas they should continue to be recovered through traffic sensitive access charges.<sup>33</sup>

The MAG Order is only the most recent of many dramatic changes to the Commission's rules governing interstate cost recovery. In the five years following the 1996 Act's passage, the Commission has extensively revised its universal service and access charge rules for both price cap and rural companies, initiated separations reform, and undertaken many other changes to accommodate changes in the market and in technology. Whatever benefits these changes have, it is impossible to ignore the fact that rural companies are becoming increasingly dependent upon escalating end user charges and uncertain universal service fund support to recoup their costs.<sup>34</sup> Proposals under consideration for a unified intercarrier compensation regime, next on the Commission's agenda, could have far more dramatic impacts on rural ILEC's and their customers.<sup>35</sup>

Until the consequences of changes already mandated by the MAG Order as well as prior reform actions are understood, the Commission should exercise great care in considering any proposals that would further jeopardize rural carriers' ability to recover costs. The Commission needs to have a clear, accurate understanding of the actual impacts of its recent decisions on rural areas before undertaking further action to increase end user charges and/or depending on universal service funding. Contrary to claims

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<sup>33</sup> See Plains PFR.

<sup>34</sup> See Alliance PFR at p. 19-22.

<sup>35</sup> See Comments of NECA, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (filed Aug. 21, 2001) at p. 5-6 describing anticipated impact on rural end user rates if bill and keep were to replace the existing access regime.

made by some parties in this proceeding,<sup>36</sup> for example, telecommunication charges paid by rural customers often significantly exceed those of their urban counterparts when such factors as restricted local calling scope and long distance charges are factored in to the analysis.<sup>37</sup>

Dramatic changes in interstate cost recovery mechanisms resulting from universal service reform, the MAG Order, separations reform, marketplace and technology changes and other factors are likely to affect rural carriers and their customers even more in the coming year. The Commission must take care to avoid creating additional uncertainty in the rural telecommunications marketplace at the current time. Companies are seriously concerned about the potential impacts on customers as the new rules are phased in over the next year and a half. These changes come at a time when carriers are under great pressure to meet the challenges of actual or potential competition, while at the same time satisfying increasing customer demand for broadband capability. Many forums and surveys have pointed to the high cost to bring such service to rural Americans. Without some semblance of stability in the regulatory environment, rural carriers will not be able to maintain existing services, extend services into new areas, or deploy advanced services to rural areas.

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<sup>36</sup> See, e.g. RCCC PFR, Exhibit D at p. 13 (Comparable Residential Rates - Total Fixed Monthly Bill (RUS v. Urban)).

<sup>37</sup> These factors are taken into consideration in other available studies, including OPASTCO's Keeping Rural America Connected: The Dynamics of Serving Rural America by Douglas A. Dawson, Linda M. Buckley, and John N. Rose. This study explains how rural customers have higher long distance bills than non-rural customers, as a result of smaller local calling areas. OPASTCO explains that rural customers often must pay toll rates to call schools, stores, doctors, and government services.

The Commission needs to know how these decisions are actually affecting rural carriers and their customers. To this end, NECA is planning to undertake a study to assess the impact of ROR carrier access reform on the rural marketplace. NECA's study will focus on the unique characteristics of rural areas and evaluate the rural impact of trends toward increasing cost recovery from end users. In addition, NECA will address universal service considerations, such as the sustainability of increasing levels of universal service support and the effects of competition and support portability on rural areas. Finally, NECA will evaluate potential alternatives for the future. This study will provide a comprehensive examination of the cumulative effects of recent access and universal service regulatory reforms on rural America, to assist the Commission and other policy makers in determining further courses of action regarding access reform.

The effects of recent and already-planned changes in ROR carrier rules and regulation will become known over time. The interim separations freeze just went into effect on July 1, 2001 and will extend for a five-year period.<sup>38</sup> Also on July 1, 2001, interim modifications to ROR universal service funding mechanisms went into effect, also for a five-year period.<sup>39</sup> Changes resulting from the *MAG Order* will be phased-in over an 18-month period that began on January 1, 2002. Rather than plow ahead with

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<sup>38</sup> See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket o. 80-286, *Report and Order*, 66 Fed. Reg. 33202 (2001) at ¶ 9 (*Report and Order*).

<sup>39</sup> See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Multi Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, *Fourteenth Report and Order, Twenty-Second Order On Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256*, 16 FCC Rcd 11244 (2001) (*RTF Order*).

more changes at this point, the Commission should embark on a course of careful analysis, in full collaboration with the Federal-State Joint Board and the telecommunications industry. NECA expects that its study will provide substantial assistance to the Commission in this effort.

## **V. CONCLUSION**

Commenters such as the RCCC agree that changes need to be made to the Commission's ICLS rules in order to assure successful implementation of this new mechanism and to effectuate the intent of the *MAG Order*. As NECA made clear in its comments in the *FNPRM* phase of this proceeding, its existing pooling processes can be modified to accommodate a variety of rate-setting and settlement mechanisms, including changes to transport cost allocation methods suggested by some commenters in this proceeding.

The Commission has already established a separate proceeding to consider changes to the LTS cost recovery mechanism, and should not prejudge the outcome of that proceeding.

Finally, the Commission should not move forward with any changes to its rules that might further jeopardize universal service until it has adequate knowledge of the



effects of recent and planned reforms. NECA plans to assist the Commission and policy makers in this regard by initiating a study of the effects of cost recovery changes on rural carriers and their customers.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply was served this 25th day of February 25, 2002, by electronic delivery or first class mail, to the persons listed below.

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